

536-557

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
THOMAS CIARLO,  
d.b.a. St. Florence Apartments,  
Appellant,

vs.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,  
Respondent.

PCHB No. 557

FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

THIS MATTER being an appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 29th day of May, 1974; and appellant Thomas Ciarlo appearing pro se, and respondent Puget Sound Air Pollution Control Agency appearing through its attorney Keith D. McGoffin; and Board members present at the hearing being Walt Woodward and Mary Ellen McCaffree; and the Board having considered the sworn testimony, exhibits, records and files herein and

1 having entered on the 31st day of May, 1974, its proposed Findings of  
2 Fact, Conclusions of Law and Order; and the Board having served said  
3 proposed Findings, Conclusions and Order upon all parties herein by  
4 certified mail, return receipt requested and twenty days having elapsed  
5 from said service; and

6 The Board having received no exceptions to said proposed Findings,  
7 Conclusions and Order; and the Board being fully advised in the premises;  
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
10 Findings of Fact, Conclusions of Law and Order, dated the 31st day of  
11 May, 1974, and incorporated by this reference herein and attached hereto  
12 as Exhibit A, are adopted and hereby entered as the Board's Final Findings,  
13 Conclusions of Law and Order herein.

14 DONE at Lacey, Washington this 2nd day of July, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16 Walt Woodward  
17 WALT WOODWARD, Chairman  
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19  
20  
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24  
25

26 FINAL FINDINGS OF FACT,  
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CERTIFICATION OF MAILING

I, Dolories Osland, certify that I mailed copies of the foregoing document on the 3rd day of July, 1974 to each of the following parties:

Mr. Thomas S. Ciarlo  
St. Florence Apartments  
2023 - 30th Avenue West  
Seattle, Washington 98405

Mr. Keith D. McGoffin  
Burkey, Marsico, Rovai  
& McGoffin  
818 South Yakima Avenue  
Yakima, Washington 98405

Puget Sound Air Pollution  
Control Agency  
410 West Harrison Street  
Seattle, Washington 98119

the foregoing being the last known post office addresses of the above-named parties. I further certify that proper postage had been affixed to the envelopes deposited in the U. S. mail.

Dolores Osland  
DOLORIES OSLAND, Clerk  
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

1 IN THE MATTER OF )  
THOMAS CIARLO d.b.a. )  
2 St. Florence Apartments, )  
3 Appellant, )  
4 vs. )  
5 PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
6 Respondent. )  
7 )

PCHB No. 557

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

8  
9 This matter, the appeal of a \$50.00 civil penalty for an  
10 alleged smoke emission violation of respondent's Regulation I,  
11 came before the Pollution Control Hearings Board (Walt Woodward,  
12 presiding officer, and Mary Ellen McCaffree) in the Seattle  
13 facilities of the State Board of Industrial Insurance Appeals at  
14 9:30 a.m., May 29, 1974.

15 Appellant appeared pro se, respondent through Keith D. McGoffin.  
16 David Ummel, Olympia court reporter, recorded the proceedings.

17 At the outset, an informal conference was held. It failed  
18 to produce a settlement. At 10:00 a.m., the formal hearing began.

EXHIBIT A

1 Witnesses were sworn and testified. Exhibits were offered.

2 From testimony heard and exhibits examined, the Pollution Control  
3 Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 On March 9, 1974, a smoke emission complaint caused an inspector  
7 on respondent's staff to visit the St. Florence Apartments, owned  
8 by appellant and located at 504 E. Denny Way, Seattle, King County.  
9 The inspector noted black smoke being emitted from the apartments'  
10 boiler stack. He called this to the attention of the manager's wife  
11 and left material on respondent's Regulation I, including the  
12 provisions of Section 9.16 thereof.

On March 21, 1974, smoke of opacity equal to No. 5 on the  
14 Ringelmann Chart was emitted for at least six consecutive minutes  
15 from the boiler stack of the St. Florence Apartments.

16 This emission, noted by an inspector on respondent's staff,  
17 caused respondent to serve on appellant Notice of Violation No. 9487,  
18 citing Section 9.03 of Regulation I, and Notice of Civil Penalty No.  
19 1481 in the sum of \$50.00, which is the subject of this appeal.

20 II.

21 Section 9.03 of respondent's Regulation I makes it unlawful  
22 to cause or allow the emission of an air contaminant for more than  
23 three minutes in any one hour, which contaminant is darker in  
24 shade than No. 2 on the Ringelmann Chart. Section 3.29 authorizes  
25 respondent to invoke a civil penalty of not more than \$250.00 for  
any violation of Regulation I. Section 9.16 states that violations

27 FINDINGS OF FACT,  
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AND ORDER

1 caused by unavoidable upset conditions shall not be deemed to  
2 be violations if respondent is notified immediately by the owner or  
3 operator of the equipment.

4  
5 III.

6 Immediately after the issuance to appellant of Notice of  
7 Violation No. 9487 a qualified oil furnace repairman found the  
8 furnace equipment of the St. Florence Apartments to be operating  
9 properly. He noted, however, that a window in the furnace room had  
10 been closed, depriving the burner of sufficient air and, thus,  
11 causing the emission.

12 IV.

13 Appellant's furnace room is kept locked, but a crack between  
14 the door and its jamb would make it possible for a person to slip  
15 the bolt and gain entrance. Appellant, who testified neither he  
16 nor his manager closed the window, believes a tenant, disgruntled  
17 at a recent increase in rental fees, opened the door and closed  
18 the window.

19 V.

20 Since March 21, 1974, the window has been nailed in an open  
21 position.

22 VI.

23 Any Conclusion of Law hereinafter recited which should be  
24 deemed a Finding of Fact is hereby adopted as such.

25 From these findings, the Pollution Control Hearings Board comes  
26 to these

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

CONCLUSIONS OF LAW

I.

There was a violation of Regulation I on March 21, 1974 as cited in Notice of Violation No. 9487 and neither appellant nor his manager utilized the provision of Section 9.16 to notify respondent thereof.

II.

The penalty in Notice of Civil Penalty No. 1481, being one-fifth of the maximum allowable amount, is reasonable. Appellant, however, has taken a step to prevent similar violations and is entitled to further clemency.

III.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal is denied, \$30.00 of the penalty is affirmed for immediate payment, \$20.00 to be suspended pending no similar violation for a period six months from the date this order becomes final.

DONE at Lacey, Washington, this 31st day of May, 1974.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward  
WALT WOODWARD, Chairman

Mary Ellen McCaffree  
MARY ELEN McCAFFREE, Member

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER